IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 6137 of 1991

For Approval and Signature:

Hon'ble MR.JUSTICE R.K.ABICHANDANI

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

RAVJIBHAI S BOARAD

Versus

STATE OF GUJARAT

Appearance:

MR DA BAMBHANIA for Petitioner

MS MANISHA LAVKUMAR, Ld. AGP for Respondent No. 1

NOTICE SERVED for Respondent No. 2

CORAM : MR.JUSTICE R.K.ABICHANDANI

Date of decision: 07/09/2000

ORAL JUDGEMENT

The petitioner challenges the order dated 22nd February, 1987 made by the State Government in its revisional jurisdiction, by which the State Government

set aside the order of the Deputy District Development Officer, District Panchayat, Amreli made on 6-1-1986, granting 49 sq.mts. of land to the petitioner for constructing a house.

2. The petitioner was granted the land in question by the order of the District Panchayat at Annexure "B" to the petition on the basis of the resolution of the Gram Panchayat and the opinion of the Taluka Development Officer as well as the report of the Chitnis, who had made the local inspection. All these were referred to in the order granting the land in question to the petitioner. Under the terms and conditions of the grant, the construction was to be completed within two years.

3. It appears that the respondent No.2 had invoked the revisional jurisdiction of the State Government against the said grant made in favour of the petitioner. The hearing of the revision application was kept at Ahmedabad on 17-11-1986 and thereafter on 1-1-1987. On 1-1-1987 the revision application was proceeded with in absence of the petitioner. The Deputy District Development Officer supported his order made in favour of the petitioner by pointing out that he was authorised to make such order by resolution of the State Government made on 16-9-1979 and the land could be given to the petitioner, because it was adjacent to the land in which he had his own building.

4. The Revisional Authority, however, held that the land could not have been granted without holding an auction, and set aside the grant on that ground by its order dated 22-2-1987.

5. Admittedly, the petitioner has remained in possession of the land all through out and after the filing of the petition, the possession has remained with him on the strength of the interim order. The learned Counsel for the petitioner points out that the petitioner has already constructed the house as stated in para 4 of the petition. He also submits that the land could have been sold even without an auction and therefore, the ground on which the grant is set aside cannot be sustained.

6. It is clear that the impugned order made by the State Government in exercise of its revisional powers is based mainly on the ground that the land in question was not auctioned and the Government land can be sold only through an auction. The stand taken by the Revisional Authority flies in face of the provisions of Rule 42 of

the Gujarat Land Revenue Rules, 1972, which vests the Collector with a discretion to dispose of such land by private arrangement, either upon of payment of a price fixed by him, or without charge, as he deems fit. It appears that Revisional Authority did not take note of the said provision and other Government orders that may have bearing on the question of grant of land by such private arrangements. The Revisional Authority decided the matter without the assistance of the petitioner, who, according to the learned Counsel for the respondent, was served but had not remained present. Since the impugned revisional order is made, ignoring the provisions which empowered the authority to sell land by private arrangements also, the impugned order cannot be sustained and is hereby set aside, leaving it open to the concerned authority to take a fresh decision in accordance with law, and also keeping in view that there has already been construction made since long for residential purposes by the petitioner. Rule is made absolute accordingly, with no order as to costs.

7-9-2000 (R.K. Abichandani, J.)

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